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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison
Company (U338E) for Approval of its Energy
Savings Assistance and California Alternate
Rates for Energy Programs and Budgets for
Program Years 2015-2017.

Application 14-11-007

And Related Matters.

Application 14-11-009

Application 14-11-010

Application 14-11-011

**THE PUBLIC ADVOCATES OFFICE'S
PETITION FOR MODIFICATION OF DECISION 16-11-022**

[PUBLIC VERSION]

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I. INTRODUCTION

Pursuant to Rule 16.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Public Advocates Office submits the following Petition for Modification of Decision (D.) 16-11-022. D.16-11-022 authorized the Energy Savings Assistance (ESA) and California Alternate Rates for Energy (CARE) programs and budgets for the four large investor-owned utilities for program years 2015-2020.

The Public Advocates Office bases its Petition for Modification on evidence of Pacific Gas and Electric Company's (PG&E) procurement irregularities discovered sometime after the Commission issued D.16-11-022.¹ In addition, a remedy for these irregularities now exists with the Commission's approval of a third-party procurement oversight model in D.18-01-004. Audits conducted by the State Controller's Office previously found problems in (PG&E's) competitive ESA solicitation process for the 2013-2015 program years. The Public Advocates Office subsequently discovered evidence from data request responses that reveal additional irregularities in PG&E's competitive bidding process for ESA administration for the 2015-2017 budget cycle² and demonstrate a concerning pattern of solicitation process problems that continue to persist.³ These irregularities include significant changes in the solicitation timeline, non-transparent communication with individual bidders, changes to bids, and the last-minute termination of an entire solicitation followed by a new process that led to a different

¹ The Public Advocates Office became aware of potential irregularities in PG&E's solicitation process for ESA administration in the fall of 2017. To gain a better understanding of the situation, the Public Advocates Office issued data requests to PG&E on October 4 and December 6, 2017. Therefore, this Petition for Modification could not have been filed within one year of the issuance of D.16-11-022. See CPUC Rule of Practice and Procedure 16.4.(d).

² D.16-11-022 authorized an extension of the budget cycle to the end of 2020: "As a matter of fairness and program stability, the budgets we adopt today for the 2015-2017 Applications should cover calendar years beyond 2017, and we herein extend the current budget cycle to the end of 2020", p. 6.

³ PG&E's confidential data request responses are available upon request.

outcome. As a result, PG&E ratepayers paid higher costs for many ESA services than they would have if the first solicitation had been correctly completed. The Public Advocates Office provides the details of solicitation irregularities along with a timeline of events below.

Evidence shows that the ESA procurement process would benefit significantly from additional Commission oversight to ensure that solicitations are run competently and fairly, and that decisions are made transparently and in accordance with Commission policy. The absence of a fair and transparent process for selecting ESA contractors leaves in doubt whether PG&E's procurement process has successfully identified and contracted with the well-established least-cost and best-fit supplier. Competitive bidding processes should encourage market competition that incentivizes market actors to find ways to deliver ESA services more effectively and efficiently. Solicitation irregularities and a lack of transparency erode confidence that the bidding process is truly fair and may lead market actors to withdraw from the bidding process entirely. This can lead to increased costs to ratepayers and the potential of selecting a less effective contractor.

Other evidence also indicates that the process for hiring ESA contractors is currently undermining the Commission's aims. A recently published working paper by researchers affiliated with the Energy Institute at the University of California Berkeley's Haas School of Business⁴ shows clear evidence that poorly designed contracts fail to ensure that ESA contractors do not violate ESA procurement guidelines and install replacement refrigerators in homes that don't qualify, leading to diminished welfare and an inefficient use of ESA resources.

To remedy these issues, the Public Advocates Office recommends an oversight structure modeled on the Commission's recently adopted third-party procurement process for Investor-Owned Utility (IOU) energy efficiency (EE) portfolios in D.18-01-004,

⁴ The Welfare Costs of Misaligned Incentives: Energy Efficiency and the Principal-Agent Problem, Joshua A. Blonz, Energy Institute at Haas, November 28, 2018.

which aims to provide transparency and a sufficient level of Commission oversight. Adopting a procurement process for ESA that mirrors the process for EE will help ensure that the Commission avoids procurement irregularities or detects them quickly, creating confidence that solicitations are conducted fairly and generating more robust and competitive market participation.

II. BACKGROUND

A. Overview of D.16-11-022 and Administration of ESA and CARE Programs

On November 18, 2014 the four large energy IOUs (PG&E, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas)) submitted applications for the 2015-2017 CARE and ESA Programs in accordance with D.14-11-025. D.14-11-025 also provided guidance on the priorities and issues to be addressed in CARE/ESA program applications.

The IOU applications comprised proposals for program budgets, homes treated targets, energy efficiency measures, IOU marketing, outreach and enrollment practices, and program and policy changes. On November 21, 2016, the Commission approved D.16-11-022 authorizing 2015-2017 ESA and CARE programs and budgets for the four large IOUs.[§] The IOUs administer the ESA program through third-party contractors that the IOUs procure using processes that have no direct oversight by the Commission.

Information obtained by the Public Advocates Office shows irregularities in the solicitation process that PG&E utilized to procure ESA contractors for the 2017-2020

[§] Decision on Large Investor-Owned Utilities' California Alternate Rates for Energy (CARE) and Energy Savings Assistance (ESA) Program Applications (D.16-11-022). The Decision authorized an extension of the budget cycle to the end of 2020. See page 6: "As a matter of fairness and program stability, the budgets we adopt today for the 2015-2017 Applications should cover calendar years beyond 2017, and we herein extend the current budget cycle to the end of 2020".

program cycle.⁶ Recently, in the energy efficiency docket (Application (A.) 17-01-013), the Commission established new policies and processes for energy efficiency solicitations. Following approval of D.18-01-004, a Commission-authorized remedy to address these irregularities is now available, thereby justifying this Petition for Modification of D.16-11-022.

B. Timeline of PG&E's 2015-2017 ESA Contracting Process.

The following timeline, based on public information and data request responses from PG&E, provides an overview and summary of the procurement process PG&E conducted during 2015-2017⁷ to find an ESA contractor. The analysis in the Section III (below) provides greater detail on the events described in this timeline.

- **August 5, 2015:** PG&E releases “ESA Program Request for Proposal (RFP) No. 6918 – Regional Administration Request for Proposal Contract Opportunity”.⁸ The RFP divides PG&E’s territory into four administrative regions and sets an October 9, 2015 deadline for proposals to administer one, two, three or all four regions. The RFP stipulates that PG&E will notify bidders of awards on January 15, 2016.⁹
- **December 2015:** PG&E conducts bidder interviews, including presentations by the finalists: [REDACTED]

.¹⁰

⁶ The Public Advocates Office only became aware of potential irregularities in PG&E’s solicitation process for ESA administration in the fall of 2017. To gain a better understanding of the situation, the Public Advocates Office issued data requests to PG&E on October 4 and December 6, 2017. Through PG&E’s responses to these data requests, the Public Advocates Office uncovered various irregularities in the solicitation process.

⁷ D.16-11-022 authorized an extension of the budget cycle to the end of 2020. See page 6: “As a matter of fairness and program stability, the budgets we adopt today for the 2015-2017 Applications should cover calendar years beyond 2017, and we herein extend the current budget cycle to the end of 2020”.

⁸ Contract Opportunity Announcement, Energy Savings Assistance (ESA) Program RFP # 6918 – Regional Administration Request for Proposal:
https://www.pge.com/includes/docs/pdfs/b2b/purchasing/bidopportunities/COA_ESARegionalAdmin.pdf

⁹ ORA 2017_021_Q1_6918-GenInstr.

¹⁰ Power Advocate RFP 6918 Messaging.

- **November 4, 2016:** PG&E releases an RFP Clarification to all the finalists of RFP 6918 to incorporate changes in the implementation model.¹¹ The finalists submit revised bids in response to these changes.

- [REDACTED]

- [REDACTED]¹²

California law does require contractors to possess a contractor's license at the time of bidding.¹³ PG&E's RFP 6918 required that bidders comply with California law but did not specify when the bidder must possess a contractor's license.

- **February 6, 2017:** PG&E notifies bidders of its decision to terminate RFP No.6918 and issues a new RFP No. 66655: ESA Regional Program Implementation to bidders on April 27, 2017. The new RFP incorporates various changes from the initial RFP, including a requirement that the bidder have a Contractor's license at the time of bid submittal. It also stipulates that PG&E can award a maximum of three regions to a single bidder.¹⁴

- [REDACTED] PG&E awards

¹¹ LowIncomeProgramPY15-17_DR_ORA_022-Q08-Q14_Q16-Q19.

¹² ORA DR-022 Q10 Letter to PGE RFP Bid 6918 Protest_CONF.

¹³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] PG&E data response LowIncomeProgramPY15-17_DR_ORA_023_Phase1_CONF, Question 5.

¹⁴ LowIncomeProgramPY15-17_DR_ORA_022-Q08-Q14_Q16-Q19.

Nexant a contract for the Bay Area Region on October 31, 2017.¹⁵ PG&E awards RHA a contract for the other three regions on November 3, 2017.

III. DISCUSSION

PG&E's 2015-2017 RFP process for ESA Administration deviated from a normal, competitive procurement process in several respects and exhibited irregularities that include: an abnormally long duration; unusual or improper communication (between bidders and between PG&E and individual bidders); and multiple changes to the RFP content and requirements. These irregularities make the final award of the contracts questionable. A lack of transparency makes it difficult for the Commission and other stakeholders (including potential future bidders) to evaluate whether PG&E conducted the RFP process fairly and adhered to proper practice. As a result, bidders may not have offered their best price in the second RFP round, leading PG&E and, ultimately, PG&E's ratepayers to overpay for ESA services.¹⁶

Section A below describes the irregularities in PG&E's recent ESA RFP process and how these hindered a fair and competitive solicitation. Section B reveals how these procurement irregularities reduced competition and may have led to higher costs. Section C demonstrates that there is a consistent pattern of procurement irregularities going back to previous budget cycles.

A. Irregularities in PG&E's ESA RFP solicitation process (2015-2017) demonstrate a lack of transparency and fairness that requires improved oversight.

PG&E's ESA RFP process was unusually lengthy compared to other competitive solicitations, taking over two years from the issuance of the original RFP in August 2015

¹⁵ Power Advocate Messaging-RPF 66655.

¹⁶ Please refer to Table 2 on page 16 and Table 3 on page 17, which show that the prices for the final awarded bids for RFP 66655 were higher than the prices bid for RFP 6918.

to the award of contracts in November 2017. Following an initial delay in reviewing proposals, PG&E issued an update to the RFP schedule on November 24, 2015 with a plan to notify finalists of decisions by December 2. Finally, [REDACTED]

[REDACTED]
[REDACTED] ¹⁷

Through discovery the Public Advocates Office has learned that one bidder appears to have had knowledge of a competitor's participation in the RFP and perhaps specific information about the competitor's bid itself, which would have given the bidder an additional advantage by giving it unauthorized access to a competitor's sensitive market information. For example, in response to a data request PG&E disclosed the following exchange between two bidders prior to the finalist interview in an internal PG&E email dated [REDACTED]: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] that the

bidder cited above had inappropriate knowledge about a competitors' participation in the RFP. Violations of bid confidentiality can undermine market competition by, for example, giving some bidders preferential access to their competitors' pricing, supply chain management, subcontracting arrangements, or other sensitive information.

The delays that burdened the early bidding process continued during the final phase of the solicitation. Subsequent to the finalist interviews, on January 8, 2016 PG&E sent a message to all finalists stating that finalists should not expect any notification on

¹⁷ Power Advocate RFP 6918 Messaging.

¹⁸ ORA DR 22_FW_December 3rd Supplier Awards Dinner_CONF.

the RFP outcome until after February 8.¹⁹ On January 28, 2016, PG&E sent another message to finalists explaining that PG&E would not notify successful bidder(s) until February 24, 2016. Thereafter, PG&E issued several notifications to finalists extending the decision deadline, stating on March 31, 2016 that PG&E would continue to hold off on making a final decision on the RFP. This pattern of postponements and notifications may have created an uncertain planning framework for bidders and damaged their confidence in the RFP process. Unexpected and lengthy delays could deter potential bidders from participating in similar RFPs in the future, which would reduce the number and diversity of competitors.

PG&E's lack of communicating the reasons for the delay or how it would be resolved raised concerns and questions among some of the bidders. In response to the Public Advocates Office's data request,²⁰ PG&E explains the delays as follows:

[REDACTED]

However, during this time several finalists emailed PG&E requesting an explanation of the delays and updates on the schedule and decisions regarding RFP 6918. In response, PG&E issued only a simple standard response that PG&E would continue to

¹⁹ ORA DR 022 Q09, Power Advocate RFP 6918 Messaging.

²⁰ ORA DR 023 Q12

²¹ LowIncomeProgramsPY15-17_DR_ORA_023_Phase1_CONF

hold off on making a final decision but providing no explanation.²² Finally, following the issuance of D.16-11-022 in November 2016, on [REDACTED], PG&E invited [REDACTED] to enter into contract negotiations for the [REDACTED], and invited [REDACTED] to enter into contract negotiations for the [REDACTED].²³

On January 9, 2017, shortly after PG&E entered contract negotiations with [REDACTED], attorneys representing [REDACTED] sent a letter to [REDACTED]. In the letter, [REDACTED] The letter states, [REDACTED] The letter contends that [REDACTED]

In a data response to the Public Advocates Office, PG&E stated that RFP 6918 required that bidders comply with California law but did not specify when the bidder must possess a contractor's license. PG&E also stated that RFP 9818 required

²² DR_ORA, Question 9, Power Advocate RFP 6918 Messaging

[REDACTED]

²⁴ ORA DR-022 Q10 Letter to PGE Bid 6918 Protest CONF

²⁵ ORA DR-022 Q10 Letter to PGE Bid 6918 Protest CONF

subcontractors to produce a contractor's license before signing a contract. This requirement might lead a reasonable bidder to infer that the same timing requirements applied to the primary contractor.²⁶

The [REDACTED] letter [REDACTED] and its contents lead to several unresolved questions:

- How did [REDACTED] know [REDACTED] was [REDACTED] [REDACTED]?
- How did [REDACTED] know [REDACTED] was [REDACTED] for [REDACTED]?
- What information led [REDACTED] to [REDACTED] of [REDACTED] [REDACTED] [REDACTED]

Based on [REDACTED] informing PG&E that [REDACTED],²⁷ PG&E decided to terminate RFP #6918 and start again with a new RFP. On February 6, 2017, PG&E sent a letter to suppliers notifying them of its decision to terminate RFP #6918 and its plan to issue a new RFP for ESA program administration within four weeks.²⁸ However, PG&E did not provide bidders with its reason for terminating RFP #6918. The Public Advocates Office obtained documents through discovery which demonstrate that

[REDACTED]
[REDACTED] The fact that [REDACTED] was the source of information for the [REDACTED] issue which led to the [REDACTED], coupled with [REDACTED] [REDACTED] creates an impression of impropriety.

²⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] PG&E data response LowIncomeProgramPY15-17_DR_ORA_023_Phase1_CONF, Question 5.

²⁷ Regional Implementer RFP update CONF; LowIncomeProgramsPY15-17_DR_ORA_022-Q14_Q16-Q19, Answer 10.

²⁸ RFP No 6918 PGE Termination Letter.

²⁹ Termination of RFP No.6018 for ESA Admin, to be reissued (2).

Evidence shows that bidders themselves were concerned with the delays and problems with the procurement process. [REDACTED]

[REDACTED] sent a letter to a [REDACTED] requesting [REDACTED]

[REDACTED] In its letter, [REDACTED] contended that [REDACTED] had [REDACTED] and that over the [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] but the Public Advocates Office has been unable to ascertain [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On April 17, PG&E issued RFP No. 66655 for ESA administration. RFP No. 66655 modified the original solicitation (RFP No. 6918) and included an explicit requirement that bidders possess a contractor's license at the time of proposal submittal and a stipulation that a maximum of three regions could be awarded to a single bidder.³² Shortly thereafter, in an email [REDACTED]

noted that [REDACTED] had been [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ³³

³⁰ Nexant letter to PGE_021317.

³¹ Regional Implementer RFP_CONF.

³² LowIncomeProgramPY15-17_DR_ORA_022-Q08-Q14_Q16-Q19.

³³ RE_REQUEST_ESA RPF communication brief review_CONF.

On [REDACTED] PG&E opened contract negotiations with [REDACTED]. PG&E awarded ESA implementation contracts to administer for three regions to RHA on October 27 and for one other region to Nexant on October 31, 2017.³⁴

The most effective way to eliminate the risk of undermining the objective evaluation of future RFPs would be to utilize the solicitation process the Commission established for energy efficiency that includes thorough review at each stage of a solicitation (Section IV, below, describes this process in detail).

B. PG&E's procurement irregularities reduced competition leading to higher-cost bids

In sum, the evidence presented in the previous section suggests that PG&E did not conduct a fair and unbiased solicitation process and makes clear that the bid evaluation process lacked transparency. One consequence was a decrease in competition for the ESA contract. As Table 1 shows, there was [REDACTED] submitted bids for the second RFP (no. 66655) compared to the first RFP (no. 6918). A [REDACTED] of bids makes the solicitation process less competitive.

Table 1: Fewer Bidders Registered and Fewer Bids Were Submitted in the Second Solicitation³⁵

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

³⁴ Although PG&E documents (Consolidated Scorecard RFP 66655_CONF) show that RHA's bids were scored higher in each of the four regions, RFP 66555 was designed so that at least one of the four regions would go to a different bidder. [REDACTED]

³⁵ ORA DR-022 Q11 RFP 66655 Pre-Bid Registration_CONF; ORA-2017-022_Q3 RFP Participants_CONF; ORA DR-022 Q06 2015 Bid Docs; ORA DR-022 Q15 2017 Bid Docs.

[REDACTED]	[REDACTED]	[REDACTED]
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Another apparent outcome of the lengthy and irregular solicitation process PG&E administered was a large increase in the amount ratepayers are paying for ESA administration. [REDACTED]

[REDACTED]

[REDACTED]

Table 2: Bidders Submitted Higher Prices for the Second Solicitation.

[REDACTED]	[REDACTED]		[REDACTED]	
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

As noted above, fewer suppliers participated in RFP no. 66655, resulting in a less competitive bidding process. Overall, the bids submitted by suppliers in the second RFP (no. 66655) were also costlier. Although both finalist bids increased, in the end

³⁶ It should be noted that these figures do not take into account any potential impacts on prices resulting from the bid process and differences in the requirements between the two RFPs, resulting from D.16-11-022 or PG&E's own procurement requirements.

³⁷ RHA_Program_Admin_Pricing_Template-CONF.

³⁸ RHA_RFP_66655_Pricing_Sheet_All_Regions-CONF.

³⁹ Nexant_ESA_Program_Administration_Pricing-CONF.

⁴⁰ Nexant_RFP_66655_Pricing_Sheet_Final-CONF.

ratepayers ended up paying even more since PG&E awarded three regions to RHA, whose bid [REDACTED], and one region to Nexant, whose bid [REDACTED]

The Public Advocates Office analyzed information from PG&E's data request responses which demonstrates that PG&E's second RFP resulted in ratepayers paying a higher cost for many individual ESA measures. For example, [REDACTED] than [REDACTED]. A detailed analysis reveals that RHA estimates [REDACTED] to replace a gas furnace while [REDACTED] estimates only [REDACTED]. Even RHA's bid price for a simple measure such as [REDACTED]

Because PG&E was unable to complete the initial RFP, ratepayers are paying more for services that they could have acquired for significantly less money.

Using information provided in PG&E's data request responses, the Public Advocates Office compared the costs of all measures whose total measure costs exceeded \$100,000 in Nexant's bid for RFP 6918 and RHA's bid for 666555 for the Central Coast region and Northern region (see Table 3).⁴² These 21 measures account for [REDACTED] of total measure costs. The analysis is shown in Table 3.

⁴¹ RHA_Program_Admin_Pricing_Template-CONF; RHA_RFP_66655_Pricing_Sheet_All_Regions-CONF; Nexant_RFP_66655_Pricing_Sheet_Final-CONF; Nexant_ESA_Program_Administration_Pricing-CONF.

⁴² Table 3 compares the unit measure costs of winning bids in the Northern and Central Coast region, the two regions where the change in measure costs is most transparent due to a change in the winning contractor between RFP 6918 and RFP 66655. A comparison using total measure costs or total contract costs is confounded by the additional measures and other policy changes (such as the suspension of the go-back rule) directed by the Commission in D.16-11-012, which makes a direct cost comparison difficult to interpret. Unit measure costs are unlikely to be sensitive to regulatory policy changes and other exogenous factors and, therefore, present the most straightforward measure of changes in ratepayer costs between solicitations.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 3: ESA Unit Measure Costs Increased Between the Winning Bid in RFP 6918 and the Awarded Bid in RFP 66655)⁴³

Comparison of unit measure cost between [REDACTED] RFP 6918 (2016) and [REDACTED] RFP 66655 (2017) - Central Coast region				
Measure	[REDACTED] - Measure Cost in RFP 6918	[REDACTED] Measure Cost in RFP 66655	Difference in cost between RFPs	Percent change between RFPs
Furnace Replacement Gas	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
High Efficiency Clothes Washer	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Refrigerator	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Duct Seal	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Window Assembly Replacement	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Door Replacement	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Duct Test	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Water Heater Blanket Gas	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Natural Gas Appliance Test	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Door Weather-stripping	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Customer Enrollment	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Caulking, single family	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Caulking, 2-4 Plex	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Thermostatic Valve	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Combustion/Ventilation Air Installation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁴³ [REDACTED]

Occupancy Sensor				
Utility Gaskets				
Wall Repair - interior				
Showerheads				
Faucet Aerators				
Attic Insulation				

Comparison of unit measure costs between [REDACTED] RFP 6918 (2016) and [REDACTED] RFP 66655 (2017) - Northern region				
Measure	Measure Cost in RFP 6918	Measure Cost in RFP 66655	Difference in cost between RFPs	Percent change between RFPs
Furnace Replacement Gas				
High Efficiency Clothes Washer				
Refrigerator				
Duct Seal				
Window Assembly Replacement				
Door Replacement				
Duct Test				
Water Heater Blanket Gas				
Natural Gas Appliance Test				
Door Weather-stripping				
Customer Enrollment				
Caulking, single family				
Occupancy Sensor				
Thermostatic Valve				
Caulking, 2-4 Plex				
Combustion/Ventilation Air Installation				
Utility Gaskets				
Wall Repair - Interior				
Showerheads				
Faucet Aerators				
Attic Insulation				

Overall, PG&E's solicitation for ESA program administration lacked transparency and was marked by several irregularities. For the second solicitation, fewer firms bid and those that did participate, bid at higher prices. The solicitation process appears to have left ratepayers paying more for many services that could be been provided at lower costs.

C. PG&E's previous ESA solicitations demonstrate a pattern of irregularities that require remediation.

PG&E's 2017-2020 ESA implementation procurement is not the only time that problems have been found in PG&E's competitive ESA solicitation process. The State Controller's Office (SCO) has audited all four IOUs' ESA programs for the budget period covering January 1, 2013 to December 31, 2015 and released a draft audit result⁴⁴ on October 5, 2018. As part of its audit of PG&E's ESA program, the [REDACTED]

[REDACTED]

In a similar finding, [REDACTED]

[REDACTED]

⁴⁴ Pacific Gas and Electric Company Audit Report - Energy Savings Assistance Program, January 1, 2013, through December 31, 2015 (PG&E Audit). California State Controller, October 2018, p. 6. The audits are conducted pursuant to an interagency agreement between the State Controller's Office and the California Public Utilities Commission, where the Commission has requested the audit of the four investor-owned utilities' ESA and CARE programs.

⁴⁵ PG&E Audit, p. 6.

⁴⁶ PG&E Audit, p. 6.

Thus, the lack of transparency and questionable practices in PG&E's bidding process for the 2017-2020 ESA budget cycle appear to be a persistent pattern and practice rather than an isolated event.

D. Poorly Defined Contract Terms Across Utility Administrators May Be Reducing the Benefits of the ESA Program.

Researchers affiliated with the Energy Institute at U.C. Berkeley's Haas School recently published a working paper that demonstrates that the incentive structure for contracts led to diminished welfare and an inefficient use of ESA resources.⁴⁸ Specifically, the working paper provides convincing evidence that some ESA contractors have been violating ESA procurement guidelines and installing replacement refrigerators in homes that don't qualify.⁴⁹ The outcomes of this fraudulent contractor behavior are welfare destroying and have made ESA less cost-effective without significantly improving the health or welfare of participants.

One factor facilitating the contractor fraud identified in the working paper is the misalignment of roles and responsibilities in current ESA contracts.⁵⁰ Specifically, the current contracting structure combines the auditing role, which identifies customer needs, with the measure installment role. The combination of these two roles gives contractors an opportunity to increase profits by improperly increasing the number of measures they install. The Commission should examine this research and consider splitting the auditor and installer roles to reduce the opportunities for fraud. The Public Advocates Office

⁴⁷ PG&E Audit, p. 7.

⁴⁸ The Welfare costs of Misaligned Incentives: Energy Efficiency and the Principal-Agent Problem, Joshua A. Blonz, Energy Institute at Haas, November 28, 2018.

⁴⁹ The Welfare costs of Misaligned Incentives: Energy Efficiency and the Principal-Agent Problem, Joshua A. Blonz, Energy Institute at Haas, November 28, 2018: p. 3.

⁵⁰ The Welfare costs of Misaligned Incentives: Energy Efficiency and the Principal-Agent Problem, Joshua A. Blonz, Energy Institute at Haas, November 28, 2018: p. 8.

notes that the procurement remedies recommended in this PFM may have resulted in the identification of the poorly structured contracts sooner and avoided the welfare reducing behavior and inefficient use of resources that current contracts continue to enable.

IV. THE COMMISSION SHOULD MODIFY D.16-11-022 TO ADOPT THE PROCUREMENT OVERSIGHT STRUCTURES USED IN ENERGY EFFICIENCY PROCUREMENT.

To ensure that future ESA procurements identify and contract third-parties who will provide effective energy-efficiency services to low-income customers at the lowest cost to ratepayers, the Commission should adopt a procurement oversight structure that addresses the schedule delays, lack of transparency, and perceptions of unfairness that characterized PG&E's 2013-2015 and 2017-2020 ESA solicitations. The Commission should do this by adapting the procurement oversight structure established in D.18-01-014 for energy efficiency (EE) procurements to cover ESA procurements as well. The Commission should make the necessary changes to adopt this procurement oversight structure through a modification of D.16-11-022.

D.18-01-004 provides an oversight structure for energy efficiency procurement that helps to ensure transparency and provides for meaningful procurement oversight. This structure includes three important components: the establishment of a procurement review group (PRG) to provide stakeholder involvement, the utilization of an independent evaluator (IE) for each solicitation to help inform the PRG, and a requirement that significant procurements be approved by the Commission (via advice letter).

The PRGs established by D.18-01-014 are to be made up of members of non-financially-interested parties, including Commission staff, the Natural Resources Defense Council, and the Public Advocates Office. The group meets regularly to review energy efficiency procurements both in the planning and selection stages.⁵¹ The PRG reviews

⁵¹ D.18-01-004, Ordering Paragraph (OP) 3, pp. 61-62.

and suggest improvements for each step of the procurement process from the drafting of RFPs through the review of bids, to help ensure that RFPs are well-designed and well-executed. The participation of non-financially-interested parties also provides transparency to the RFP process.

To support the PRGs, D.18-01-004 requires the IOUs to solicit and contract with a pool of IEs with energy efficiency expertise.⁵² The IE's responsibilities include providing consultation and support to the PRGs, particularly with solicitation structure and process as well as other technical aspects of the solicitation that might require specific expertise. The IEs also provide a report on each solicitation to the appropriate PRGs and provide a semi-annual report on all IOUs' solicitation process to the energy efficiency rulemaking proceeding.

To ensure there is meaningful Commission oversight, D.18-01-004 requires that the IOUs file a Tier 2 advice letter for "each third-party contract, or batch of third-party contracts, that is valued at \$5 million or more and /or with a term of longer than three years, for Commission review."⁵³ The IE's report on the solicitation must be appended to the advice letter.⁵⁴

The Commission modeled the energy efficiency PRGs adopted in D.18-01-004 on existing supply-side PRGs that have been successfully used in a variety of supply-side electrical procurements over the past 15 years.⁵⁵ Requiring that procurements be reviewed by a PRG helps catch biases, provides oversight in the procurement process, and ensures fairness. Furthermore, PRGs ensure much greater transparency by institutionalizing a consultation process where the IOUs must present their decision-

⁵² D.18-01-004, OP 5, pp. 62-63.

⁵³ Ibid, Order 2, p. 61.

⁵⁴ D.18-01-004, OP 5, pp. 63.

⁵⁵ See, for examples, D.15-10-031, D.14-02-040, d.12-01-033, D.7-12-052, D.04-12-048, D.03-12-062, D.02-10-062, and D.02-08-071.

making process to the PRG and give PRG members reasonable opportunity to offer feedback. Greater transparency engenders greater confidence in the procurement process. Had a PRG process been in place during 2015-2017 solicitation PG&E would have had to justify the irregular decisions it made during the procurement process to non-financially interested stakeholders. Consulting with a PRG would likely have led PG&E to reconsider some of these decisions, and in all cases would have provided transparency into PG&E's reasons for making the decisions it made. The use of a PRG with IE involvement will help rebuild bidder and stakeholder trust in the fairness of the ESA procurement process.

D.18-01-004 also required the IOUs to contract with a pool of IEs with energy efficiency expertise.⁵⁶ An IE provides an effective means to ensure that both stakeholders and the Commission have access to an independent assessment of solicitation structure, bid evaluation criteria, and bid evaluation and contracting. IEs also provide expertise on the procurement and contracting rules and compliance with state and Commission regulations and policies. In addition, an IE's reports on the solicitation process can highlight the kind of the delays and problems that occurred with RFP no. 6918 at an early stage and allow the Commission to take steps to address the issue and thereby ensure that customers get the benefit of revised programs at lower prices.

Finally, Ordering Paragraph 2 of D.18-01-004 requires that the Commission review procurements valued at \$5 million or more, or with a term longer than three years, via a tier 2 advice letter. Advice letter review provides an opportunity for the Commission to address any irregularities in the bidding or contracting process before a significant contract goes into effect. Tier 2 advice letters also provide stakeholders an opportunity to protest any contracts that are unreasonable or do not align with statute or Commission policy and propose remedies. Since the PRG and IE are both advisory

⁵⁶ Ibid, Order 5, pp. 62-63.

rather than decision-making entities, contract review by the Commission is necessary to afford market participants the opportunity for a fair hearing. Had PG&E been required to submit contracts for Commission review in this proceeding, the advice letter process would have provided an appropriate venue for [REDACTED] to voice its concerns regarding [REDACTED] and for the issue to be resolved by the Commission, rather than PG&E. It would also provide a venue for parties to protest and the Commission to investigate the [REDACTED] in the second RFP (No. 66555). Currently there is no venue for parties to voice similar concerns to the Commission. The requirement that contracts be filed as Tier 2 advice letters provides ultimate accountability to the Commission.

Should the Commission decide to adopt the Public Advocates Office's recommendation, it need not create another PRG or require the IOUs to hire additional IEs just for ESA. The PRGs and IEs currently used in EE have relevant energy efficiency expertise and can readily be used to oversee ESA procurements as well. The oversight structure provided by D.18-01-004 ensures that procurements are conducted competently and transparently, that errors in the procurement process are caught early and corrected, and that parties have sufficient recourse when they are not. The Public Advocates Office recommends that the Commission avail itself of the same PRG/IE structures that are already in use for energy efficiency procurements to ensure that ESA procurements are conducted in a manner that is fair to all bidders, transparent, and in conformance with state and Commission policies and rules.

The Public Advocates Office recommends that the Commission adopt relevant Findings of Facts, Conclusions of Law and Ordering Paragraphs from D.18-01-004. We have referenced the relevant sections in Appendix A below. The Commission can implement the Public Advocates Office recommendations in this petition by adopting these same facts, conclusion, and orders for D.16-11-022 with two minor changes.

V. CONCLUSION

The Public Advocates Office recommends that the Commission modify D.16-11-022 to adopt the oversight structures that are now ensuring the fairness and transparency of energy efficiency procurements.

Respectfully submitted,

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APPENDIX A

The Following Findings of Facts, Conclusions of Law and Ordering Paragraphs should be adopted in a modification of D.16-11-022.

Finding of Facts:

7. There are several risks associated with not having the Commission review and formally approve of the results of the utility third-party solicitations, including the risks of contracting bias and poor RFP design leading to unbalanced portfolios and third-party solicitation, program, and/or portfolio failure.
9. The Commission can mitigate the risks associated with the third-party contracting process by requiring utility program administrators to utilize IEs and requiring Commission review of contracts with values of \$5 million or more and/or terms of longer than three years.
10. Procurement review groups are a useful vehicle for providing some transparency into the contracting process and providing feedback to the program administrators throughout the solicitation process.

Conclusions of Law:

8. The Commission should review, via a Tier 2 advice letter, any contracts that are valued at \$5 million or more and/or that have contract terms of longer than three years.
9. Commission staff should review each advice letter for compliance with all Commission decisions, that the contract is not a result of a biased solicitation process, and that the solicitation process did not thwart the intentions of successful program design, delivery, and realized savings.
10. Commission staff should produce and maintain a template for the filing of the advice letters required.
11. Each utility should have at least one PRG, with members who are not financially interested in solicitation results and represent diverse stakeholder interests, to

provide feedback during the third-party solicitation process. The PRGs should be involved at all stages of the solicitation process. PRG participation should be eligible for intervenor compensation.

12. The utilities should be required to conduct their PRGs in a similar manner to the supply-side PRGs, including advance meeting notices, and advance delivery of materials.
13. The Energy Division Director should approve of the composition of the PRGs for each utility.
14. The Commission should require each utility PA to hire a pool of IEs with energy efficiency expertise, and should not rely on the existing pool of supply-side IEs, unless they have specific energy efficiency experience.
15. The IEs should be required to: monitor the entire third-party solicitation process, from design of the first step of the solicitation through contract execution; file semi-annual reports to the Commission in the applicable rulemaking, detailing observations about the solicitation process; provide consultation support to PRG members; prepare reports on each solicitation to present to the PRGs; and prepare specific reports on any solicitation and contract resulting in an award of \$5 million or more and/or for a term of more than three years.
16. Each utility PA should be required to have appropriate IEs on board prior to the launch of its first solicitation.

Ordering Paragraphs:

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall each file a Tier 2 advice letter for each third-party contract, or a batch of third-party contracts, that is valued at \$5 million or more and/or with a term of longer than three years, for Commission review.
3. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall each

convene at least one procurement review group for energy efficiency third-party solicitations, made up of members of non-financially-interested parties, including Commission staff and the Public Advocates Office, with membership approved by the Director of the Commission's Energy Division.

4. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall conduct procurement review groups with the following requirements:

- a. All meetings shall be noticed at least three business days in advance.
- b. Any materials to be discussed in the meetings shall be distributed at least 48 hours in advance.
- c. Meeting notes shall be distributed within one week of the meeting conclusion or before the next scheduled meeting, whichever comes first.
- d. Call-in numbers shall be provided to all participants.
- e. The groups shall be consulted at all stages of the solicitation process, including, but not necessarily limited to:
 - A. Reviewing each sector- or segment-specific solicitation plan;
 - B. Providing timely input into the draft solicitation language and evaluation criteria; and
 - C. Providing recommendations based on review of materials.
- f. Feedback from the procurement review groups shall be included in all advice letter filings seeking approval of the request for abstract short list and/or the request for proposal to be issued.

5. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall individually solicit and contract with a pool of independent evaluators (IEs) with energy efficiency expertise, which shall be approved informally by the Director of the Commission's Energy Division. The IEs shall be on board prior to the launch of the first step of any solicitation. The IEs shall provide at least the following services:

- a. Consultation and support to the procurement review groups.

- b. A report on each solicitation to be presented to the appropriate procurement review group.
- c. A semi-annual report on the overall process and conduct of the third-party solicitations, to be filed in the relevant energy efficiency rulemaking proceeding.
- d. An individual report on the solicitation process resulting in any contract award valued at \$5 million or greater and/or with a contract term of longer than three years, to be submitted along with the Tier 2 advice letter seeking Commission review of such contracts.